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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

MISC. 508

THOMAS HANNA,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

(On Petition For Writ of Certiorari To The Supreme Court Of Illinois)

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Illinois Supreme Court is reported at 42 Ill. 2d 323, 247 N.E. 2d 610.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED FOR REVIEW

1. Whether there was probable cause to arrest the defendant?

2. Whether the search of the automobile without a warrant at the police station after officers had observed burglary tools in plain view is constitutionally permissible?

CONSTITUTIONAL PROVISIONS

The Fourth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Subsequent to a burglary in Evergreen Park, Illinois, an identified resident of that suburb who lived near the burglarized premises reported to the Evergreen Park police seeing two suspicious men in a 1963 red Ford Falcon bearing Illinois license plates. (Def. App. 2a). Upon checking the registration of the car, the police discovered its owner to be Sandra Blottiaux, the sister of three known criminals. (Def. App. 2a). Sergeant Ward of the Evergreen Park police put the car under surveillance.

On April 2, 1966, about one week later, Sergeant Ward observed defendant Hanna, a known burglar, and another man get into the Falcon, which at this time was bearing a different set of license plates. (Def. App. 2a). Sergeant Ward followed the car. Upon learning from the attendant of a gas station in which the defendant and his companion had stopped to ask directions that the two men were bound for Skokie, Illinois, Sergeant Ward telephoned the Skokie police with a description of the car and its occupants. He gave a summary of his information to Lieuten-

ant Cleburne of the Skokie police when he arrived at the Skokie police station. (Def. App. 2a).

Lieutenant Cleburne transmitted this information to his men and to the men of the police departments of the surrounding areas. (Def. App. 3a).

Just after 10:00 P.M. that evening, the Skokie police responded to a burglary in progress call at a home in that suburb.

Lieutenant Dennis of the Niles police department had received the information concerning the defendant and his companion along with a description of the car earlier in the evening from Lieutenant Cleburne. (Def. App. 3a). After the burglary call in Skokie, Lieutenant Dennis received a radio message that the red Falcon had been observed leaving the scene of a burglary. (Def. App. 4a).

Shortly after receiving this message, Lieutenant Dennis and his partner stopped the defendant's vehicle, which was travelling without a license plate light. (Def. App. 4a, 7a).

Reflected in the glare of his flashlight, Lieutenant Dennis observed a pair of worn leather gloves and an instrument which could be used as a glass cutter on the dashboard of the car. (Def. App. 4a). On the rear floor of the car were another pair of work gloves, a flashlight and a fork with bent tongs. (Def. App. 4a). There was a roll of masking tape and a mallet, the head of which was covered with tape, in the open glove compartment. (Def. App. 4a). The officers were unable to open the trunk of the car because the defendant had no key.

The defendant and Cooper, his companion, were taken to the Niles police station. About one-half hour later, a locksmith opened the trunk of the car at the Niles station

(Def. App. 4a, 5a). The trunk contained articles identified as having been taken earlier that evening during a burglary in Wilmette, Illinois.

After a bench trial in the Circuit Court of Cook County, Thomas Hanna was found guilty of burglary and given a sentence of one year to one year and a day imprisonment. The Illinois Supreme Court affirmed this conviction on March 27, 1969. The petition for rehearing was denied on May 27, 1969. The defendant now petitions this Court for a Writ of Certiorari. Pending final disposition of this case, his sentence has been stayed.

REASONS FOR DENYING THE WRIT

I.

THE POLICE HAD PROBABLE CAUSE TO ARREST THE DEFENDANT.

The defendant would have this Court believe that the sole basis for his arrest was the report of his suspicious conduct by an informant to the Evergreen Park police. This contention completely ignores the actual facts of the case which reflect probable cause for Hanna's arrest.

An arrest is constitutionally valid if, at the moment it is made, the officers had "probable cause" to make the arrest—that is:

> "Whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense." *Brinegar* v. *United States*, 338 U.S. 160, 175-6, (1949).

The state submits that on the facts of this case, Lt. Dennis and his partner were justified in believing that the defendant had committed a burglary.

The suspicious conversation of the defendant had been reported by an informant to the Evergreen Park police one week before the arrest. This informant was a resident of Evergreen Park who lived in the vicinity of a recently burglarized home. He noticed Hanna and his companion in the area and reported defendant's behavior and a description of the car to the police.

Sergeant Ward of the Evergreen Park police put the car under surveillance and checked into its ownership. This check revealed that the car belonged to the sister of three

known criminals—a factor certainly relevant in a consideration of the circumstances known to the police at the time of the arrest. Contrary to the defendant's emotion-laden characterization of this factor as an attempt to introduce a concept of "attainder of blood" in the annals of American jurisprudence (Def. Br. 5), the criminal associates of the defendant are relevant to the determination of whether or not he may have committed an offense. While this factor is not determinative, it is entitled to some weight. Indeed, in *Sibron* v. *New York,* 392 U.S. 40 (1968), the arrest of the defendant for unlawful possession of heroin was based upon his association with a number of known narcotics addicts. This court found this factor *alone* insufficient to constitute probable cause for the arrest. In the instant case the arrest is supported by several additional factors which, when considered together, constitute probable cause for the arrest.

On the night of the arrest, the car bore different license plates than had been observed by Sergeant Ward earlier that week. In addition, the car was operating without a license plate light. The defendant's argument that this second license plate was merely the result of a tardy renewal of the license with the Secretary of State is completely unsupported by the evidence. At trial, the defendant made no effort to establish this theory. Indeed no evidence was introduced by the defendant to prove that the original license plate was not a 1966 issue.

The more logical explanation for the changed license plates is an effort by Hanna to avoid identification of the auto by police during his nocturnal travails. This theory is supported by the absence of a license plate light on the car.

The defendant likewise ignores much of the other relevant information which the police had in their possession

and which affected their decision to stop the defendant's car. Hanna was a known burglar. He had been seen driving the car in the vicinity of two burglaries (in Evergreen Park and Skokie) and was reported by a police officer as having been observed leaving the site of a burglary in Skokie just before he was arrested.

From the circumstances of this case, the facts known to the police support a "reasonable belief" that a crime had been committed and that the defendant had perpetrated the offense. There was probable cause to arrest Hanna without a warrant.

The defendant's citation of *Beck* v. *Ohio,* 379 U.S. 89 (1964) and *Sibron* v. *New York, supra,* is futile since these two cases are easily distinguishable on their facts. In *Beck,* there was a very meager record consisting mainly of the testimony of the arresting officer taken on a motion to suppress. His testimony was vague, indicating only his knowledge of the defendant's prior record, supported by a police identification photograph, and undefined "reports" with no acknowledgements of their content or source.

In the instant case, the informant and the content of his report were identified. The police knew of Hanna's prior burglary history. In addition, the police had the several other factors previously discussed to further substantiate their decision.

As indicated earlier, *Sibron* is also inapplicable. In that case, the police had no basis for stopping the defendant other than his association with known narcotics addicts. Herein, the defendant's possible criminal association is only one of many factors available to the police in determining that there was probable cause for the arrest without a warrant.

II.

THE SEARCH OF DEFENDANT'S CAR WAS REASONABLE UNDER THE FOURTH AMENDMENT.

The question of whether a search and seizure is reasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of the particular case. *Cooper* v. *California*, 386 U.S. 58, 59 (1967). Here the defendant asserts that this court must determine that the ruling in *Preston* v. *United States*, 376 U.S. 364 (1964) is of continuing validity despite the opinion in *Cooper* v. *California, supra*. The State submits that it is unnecessary to reach this question in deciding whether the facts of the instant case support the warrantless search of the defendant's automobile. Following the rationale of *Dyke* v. *Taylor Implement Manufacturing Company, Inc.*, 391 U.S. 216 (1968) (upon which defendant primarily relies), the search was permissible under the Fourth Amendment.

The defendant's car was stopped by the Niles police in connection with a burglary charge. The arresting officers, from the facts within their knowledge at the time, had probable cause to believe the defendant and his companion had committed a burglary. When Lt. Dennis scanned the car and its occupants with his flashlight, he observed in plain view several articles and tools normally used in the commission of such a crime.

As this court recognized in *Dyke*, a warrantless search of an automobile must be grounded on the reasonable or probable cause of the officers conducting the search in believing that "they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless search." 391 U.S. at 221. Upon the facts of this case, Lt. Dennis and his partner had such probable cause before they began the search.

They had stopped the defendant's car to investigate a burglary charge. Instruments used in the commission of such an offense were in plain view of the officers, who had a right to be in a position to view them. *Harris* v. *United States*, 390 U.S. 234, 236 (1968). In these circumstances, the officers were justified in their belief that a search of the car would reveal evidence of the crime. A search warrant was not required.

Even assuming the continuing vitality of *Preston*, the facts of this case fall within the scope of the *Cooper* factors distinguishing *Preston*. The court's opinion in *Cooper* turned upon the close relationship between the search of the car and the reason for the defendant's arrest. In *Preston*, disregarding the question of the legality of the police custody of the car, the search had no relationship to the vagrancy charge on which the defendant was arrested. In *Cooper* and in the instant case, the search of the auto was directly related to the reason for the defendant's arrest.

Defendant's allegation that there was "no crime known or even suspected until after the search of the automobile" (Def. Br. 9) is fallacious in view of the substantial facts in the record supporting the probable cause for Hanna's arrest.

CONCLUSION

For the foregoing reasons, the Respondent requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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